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No. 83-720

IN THE

**Supreme Court of
the United States**

OCTOBER TERM, 1983

HUMPHREYS (CAYMAN), LTD. and

HOLIDAY INNS, INC.,

Petitioners,

v.

**VICTORIA A. LEHMAN,
as Executrix of the Estate of
Robert Wayne Lehman, Deceased,**

Respondent.

**ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

PETITIONERS' REPLY MEMORANDUM

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Counsel of Record for Petitioners

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**Supreme Court of
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Respondent cites *Koster v. (American) Lumbermen's Mut. Casualty Co.*, 330 U.S. 518 (1947) in support of her proposition that a *forum non conveniens* defense must be supported by a finding that the forum was chosen by the plaintiff to vex, oppress, or harass the defendant. This is not the holding in *Koster*. Respondent's interpretation of *Koster* implies the requirement of an intent on behalf of a plaintiff to choose his forum purposely to vex and harass a defendant in order for there to exist a *forum non conveniens* defense. Of course, intention of the plaintiff is not the key. Convenience to the Court and the parties is the key. As a result, the test should not be whether the plaintiff intended to vex or oppress a defendant but whether the choice of the forum is vexatious or oppressive to a defendant regardless of plaintiff's intent.

A good example however, of this plaintiff's intentions to vex or oppress can be seen in her brief on page 10 where she insists that the defendants, simply because they are corporations and may have solicited business in Iowa, must bear the added expense and inconvenience of litigating in Iowa. She acknowledges that the forum may be inconvenient but submits that the defendants should be forced to suffer from that inconvenience because they are corporations who have solicited business in Iowa. This Court should resist penalizing corporations who solicit business in Iowa by forcing them to litigate in Iowa Courts that are otherwise inconvenient. The test is convenience of the Court and litigants not the corporate nature of the defendants and where they solicit business.

Again respondents argue that many of the petitioners' witnesses are employees or under their control. While this was covered in defendants' original brief, this statement cannot be allowed to pass without contradiction. Only two of the seventeen witnesses set forth by defendants are under their control and these two know nothing about the incident and would only be able to testify regarding the nature of the relationship between Humphreys (Cayman) and Holiday Inns. The remainder of those witnesses (15) are not controlled in any fashion by the defendants.

Respondent argues that Federal Rules of Appellate Procedure 28(b) and 29 provide a method for taking depositions overseas. This is granted, but there is no provision in those rules to compel attendance of unwilling witnesses to those depositions.

The respondent further argues that the decedent was only in Cayman for a short vacation as opposed to doing business there. Petitioners suggest it does not matter if plaintiff's decedent was in Cayman for a long or short time for business or pleasure. The issue is whether the forum, after applying the *Gilbert* public and private interest factors, is clearly an inconvenient one, regardless of the duration and nature of the decedent's trip.

Manu International. S.A. v. Avon Products, Inc. 641 F.2d 62 (2d Cir., 1981), is just as distinguishable from this case as the Second Circuit, itself, thought it was distinguishable from *Alcoa S.S. Co. Inc. v M/V Nordic Regent*, 654 F.2d 147 (2d Cir. 1981). In that case plaintiff sued the defendant in plaintiff's and defendant's home forum, i.e., New York. Many of the witnesses were in New York and the acts complained of occurred in New York. It would be a perversion of the doctrine of *forum non conveniens* to dismiss that case. But in the instant case, all of the witnesses are in Cayman. The decedent died in Cayman and the sail boat was rented in Cayman. Other than the solicitation of business in Iowa all of the relevant facts took place in Grand Cayman.

Respondent refers to the nondelegable duty of an innkeeper to protect his guests. Even if this is so, at some point that duty stops. Innkeepers rent rooms and they are not in the business of renting sail boats for sailing in the Caribbean Sea. Any guest who leaves his hotel room and embarks on a recreational venture by leasing an automobile, snow skis, or a hobie cat cannot rely upon the innkeeper's duty to protect him. That duty stops at the innkeeper's door and does not follow the guest as he travels from place to place. Protecting a guest from drowning or shark attack while sailing in the Caribbean Sea on a hobie cat leased from a third party is not within the ambit of an innkeeper's duty to his guests. The complaint, however, alleges that an innkeeper does have this duty and, therefore, it is imperative that plaintiff be allowed to implead the lessor of the sailboat which cannot be done in Iowa.

In light of all of the above, plaintiff's request that the judgment of the Court of Appeals be reversed and the trial court's ruling be reinstated.

Respectfully submitted,

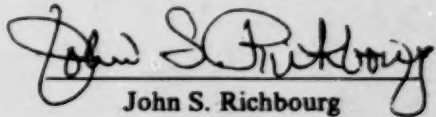
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December 15, 1983

Counsel for Petitioners

CERTIFICATE OF SERVICE

I, John S. Richbourg, attorney for petitioners herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that I served true and correct copies of the foregoing Petitioner's Reply Memorandum on Minor Barnes and Matthew G. Novak, Pickens, Barnes and Abernathy, 1010 American Building, P. O. Box 4091, Cedar Rapids, Iowa 52407, by mail on December 15, 1983.

A handwritten signature in cursive script, reading "John S. Richbourg", written over a horizontal line.

John S. Richbourg